



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 2

EMPLOYMENT INCOME: CHARGE TO TAX

CHAPTER 5

TAXABLE EARNINGS: RULES APPLYING TO EMPLOYEE RESIDENT, ORDINARILY RESIDENT OR DOMICILED OUTSIDE UK

Employees resident and ordinarily resident in UK

- 21 Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings**
- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom except to the extent that they are chargeable overseas earnings for that year.
 - (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
 - (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are received.
 - (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within section 22(1) rather than subsection (1) above.

Status: Point in time view as at 06/04/2006.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Employees resident and ordinarily resident in UK is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

22 Chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom to the extent that the earnings are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are remitted;
 but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within subsection (1) rather than section 21(1).
- (5) Where any chargeable overseas earnings are taxable earnings under subsection (2), any deduction taken into account under section 23(3) in calculating the amount of the chargeable overseas earnings—
 - (a) cannot then be deducted under section 11 from those taxable earnings, but
 - (b) may be deducted under that section from any taxable earnings under section 21.

23 Calculation of “chargeable overseas earnings”

- (1) This section applies for calculating how much of an employee’s general earnings for a tax year are “chargeable overseas earnings” for the purposes of sections 21 and 22.
- (2) General earnings for a tax year are “overseas earnings” for that year if—
 - (a) in that year the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom,
 - (b) the employment is with a foreign employer, and
 - (c) the duties of the employment are performed wholly outside the United Kingdom.
- (3) To calculate the amount of “chargeable overseas earnings” for a tax year—

Step 1

Identify the full amount of the overseas earnings for that year under subsection (2).

Step 2

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from those earnings under—

- (a) section 232 or Part 5 (deductions allowed from earnings),
- [^{F1}(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes),
or]

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- (d) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

Step 3

Apply any limit imposed by section 24 (limit where duties of associated employment performed in UK).

The result is the chargeable overseas earnings for the tax year.

Textual Amendments

- F1** Words in s. 23(3) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 55 (with Sch. 36)

24 Limit on chargeable overseas earnings where duties of associated employment performed in UK

- (1) This section imposes a limit on how much of an employee's general earnings are chargeable overseas earnings for a tax year under section 23 if—
- (a) in that year the employee holds associated employments as well as the employment to which subsection (2) of that section applies (“the relevant employment”), and
 - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The limit is the proportion of the aggregate earnings for that year from all the employments concerned that is reasonable having regard to—
- (a) the nature of and time devoted to each of the following—
 - (i) the duties performed outside the United Kingdom, and
 - (ii) those performed in the United Kingdom, and
 - (b) all other relevant circumstances.
- (3) For the purposes of subsection (2) “the aggregate earnings for a year from all the employments concerned” means the amount produced by aggregating the full amount of earnings from each of those employments for the year mentioned in subsection (1) so far as remaining after subtracting any amounts of the kind mentioned in step 2 in section 23(3).
- (4) In this section—
- (a) “the employments concerned” means the relevant employment and the associated employments;
 - (b) “associated employments” means employments with the same employer or with associated employers.
- (5) The following rules apply to determine whether employers are associated—

Rule A

An individual is associated with a partnership or company if that individual has control of the partnership or company.

Rule B

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A partnership is associated with another partnership or with a company if one has control of the other or both are under the control of the same person or persons.

Rule C

A company is associated with another company if one has control of the other or both are under the control of the same person or persons.

- (6) In subsection (5)—
- (a) in rules A and B “control” has the meaning given by section 840 of ICTA (in accordance with section 719 of this Act), and
 - (b) in rule C “control” means control within the meaning of section 416 of ICTA (meaning of expressions relating to close companies).
- (7) If an amount of chargeable overseas earnings is reduced under step 3 in section 23(3) as a result of applying any limit imposed by this section, the amount of general earnings corresponding to the reduction remains an amount of general earnings within section 21(1).

Status:

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